

REGULAR MEETING  
February 14, 2005

The Regular Meeting of the Annapolis City Council was held on February 14, 2005 in the Council Chamber. Mayor Moyer called the meeting to order at 7:30 p.m.

Present on Roll Call: Mayor Moyer, Aldermen Hammond, Tolliver, Kelley, Cordle, Fox, Cohen, Alderwomen Hoyle, Carter

Staff Present: City Attorney Spencer

- Alderman Tolliver moved to approve the Journal of Proceedings for January 10, 2005 and January 11, 2005. Seconded. CARRIED on voice vote.

PETITIONS, REPORTS AND COMMUNICATIONS

Spoke in favor of R-5-05

Dean D'Camera, 246 Prince George Street, Annapolis, Maryland 21401

Chuck Weikel, 169 Green Street, Annapolis, Maryland 21401

Matt Hudson, 181 West Street, Annapolis, Maryland 21401

Jim Martin, 79 West Street, Annapolis, Maryland 21401

Brian Cahalan, 124 Cathedral Street, Annapolis, Maryland 21401

LEGISLATIVE ACTION  
ORDINANCES

**O-31-04 For the purpose of amending the existing zoning classification for a portion of the Lonergan Bus Company property located at 1109 Boucher Avenue from R2, Single-family residence District to R3, General Residence District; and matters generally relating to said zoning map amendment.**

Alderman Fox moved to adopt O-31-04 on second reading. Seconded.

The Rules Committee and the Planning Commission reported favorably on O-31-04.

Alderman Fox moved the Planning Commission findings as follows:

Amendment #1

*[Adds the findings required before the City Council may adopt the ordinance approving the rezoning.]*

On page 2, strike lines 1 through 16 and substitute the following:

**FINDINGS**

1. Applicants are the contract purchasers of this property and seek to change the zoning on a portion of this property from R2 to R3. The various parcels of land currently constitute one large single zoning parcel used for the storage and operation of approximately 50 school buses and two residential parcels. The use of the property for school buses is legally nonconforming and the use itself dates back to the early 1960s.

2. The City Council finds that there was a mistake in the original zoning placed on the property and that there has been a change in the character of the neighborhood of the rezoning request sufficient to warrant a rezoning.

3. The rezoning of the property is in conformance with the laws of the State of Maryland the City of Annapolis and, as required under section 21.84.060. B of the

Annapolis City Code, the City Council finds the following:

**1. Population Change**

According to US Census data, as reported in the applicant's statement, in 1970 the population of the census tract in which subject property is located was 8,031. The year 1970 is used in this context because that is the last time in which subject property was comprehensively zoned. The year 2000 saw an population of 8,986, or a growth of 995 persons. The applicant's statement on population change contains some data containing the age of housing in the vicinity of subject property. This discussion is not particularly germane to the population change finding, and may be somewhat misleading because a discussion on the age of existing stock needs to include a discussion on the number of permits issues for existing stock and the extent of rehabilitation/modernization of this housing stock, which has been ongoing. A discussion of population change typically includes additional demographic data to the raw population numbers. One interesting comparison is that in 1990 9.25% of the population was age 65 and older, and 4.38% was age 55-59; in 2000 14.2% was age 65 and older which indicates a that people are generally staying in their houses. The largest demographic group is age 25-35 at 17%.

**2. Availability of Public Facilities**

This site is in-fill development and all municipal services are available without major extensions. As the property is currently zoned for approx 24 dwelling units and the request would allow fewer than 36 dwelling units, the incremental difference on impact to public services is less than 12 units.

**3. Present and Future Transportation Patterns**

Development of this site will not alter existing transportation plans or patterns. Property access/egress will use Boucher Ave and Presidents Street, both are residential collector streets. It can be anticipated that redevelopment of this property residentially will be a traffic improvement over the current use of the property for school buses. The number of trips, time of trips and vehicle mix will be compatible with current residential development.

**4. Compatibility with Existing and Proposed Development**

A rezoning request only implies a particular development—actual development plans are submitted subsequent to a successful rezoning request. The R3 zone in and of itself is not incompatible with existing development, and its compatibility with proposed development is difficult to ascertain since the nature of the area lends itself only to small scale redevelopment and in-fill. The split zoning requested by the Planning Department for this parcel will create visual compatibility and continuity of the street scape, and the higher density portion is 'hidden' from view and adjacent to multi-family development. The split zoning creates a opportunity—albeit with good site planning—for a density transition from the higher density Harbor House to the lower density single-family units on Boucher Ave.

**5. The Recommendation of the Planning Commission**

At the October 21, 2004 meeting of the Planning Commission, the Planning Commission unanimously voted to recommend approval of the requested change of zoning classification and made the following findings:

**Existing uses of property within the general area of the property in question:**

The Planning Commission concurs with staff that residential uses predominate the area in question. Specifically, the subject property abuts multi-family development on one side, and is in an area that contains both of single-family and multi-family development. A contextual study and an analysis of residential densities in the vicinity, submitted by the applicant shows that of the 816 dwelling units in the neighborhood, 615 (75%) are townhouse/multi-Family units and the remaining 201 (25%) are single-family units.

**The zoning classification of property within the general area of the property in question:**

The Planning Commission concurs with staff that residential zoning predominates in the area in question. The subject property abuts property zoned R4 on one side. In the general area of the property there is R2, R3 and R4 zoning.

**The suitability of the property in question to the uses permitted under the existing zoning classification:**

The Planning Commission concurs with staff that the area in question is suitable for continued residential uses.

**The trend of development, if any, in the general area of the property in question, including changes if any, which have taken place in its present zoning classification:**

The Planning Commission concurs with staff that the area in question has not changed substantially from residential uses. Since this property was last zoned in 1970, a number of developments have occurred. In the 1970's, Shearwater and Presidents Point were built, both are multi-family developments of over 11 dwelling units/acre. In the 1980's, Hawkins Cove (7 du/acre, townhouse), and Conte Gardens was rezoned from B1/R2 to R4 and developed at 20 units/acre. Since Conte Gardens there has been no multi-family development, and the trend has been for renovation of single-family homes. It must be noted that the land uses in the area are such that the areas of various density are fairly solidified. The only exception to the solid residential nature of this area is subject property by light of its use as for a bus storage and operations center. This is the property that effects the most destabilizing influence on the area. Based on additional information submitted by the applicant dated September 23, 2004, a 56% increase in multi-family units in the "neighborhood"(as defined by the applicant) has occurred since 1970, the year the current comprehensive zoning map was adopted.

**Minimum Size of Parcel. A lot, lots or parcel of land shall not qualify for a zoning amendment unless it possesses two hundred feet of frontage or contains twenty-five thousand square feet of area, or adjoins a lot, lots or parcel of land which bears the same zoning district classification as the proposed zoning amendment:**

The Planning Commission concurs with staff that the parcel in question meets these requirements as applicable. The parcel for which rezoning 2.13 acres, above the minimum lot size.

**The planning commission shall not recommend the adoption of a proposed amendment unless it finds that the adoption of the amendment is in the public interest and is not solely for the interest of the applicant. The planning commission may recommend the adoption of an amendment changing the zoning classification of the property to a more restrictive district than that requested by the applicant:**

The Planning Commission concurs with staff that the proposed zoning change will be in the public interest and not solely in the interest of the applicant. Currently, the property is used as a bus storage and operations lot. This is a legally nonconforming use that operates under a number of restrictions but is considered to be a nuisance in this residential area due to noise, exhaust, etc. Rezoning the property as proposed would increase the residential yield of the property by about eight units. The owner and developer assert that this increased density is necessary if the property is to be developed. There can be no doubt that moving the bus operation to an appropriate zone and developing this property residentially would be in the public interest. The type of development that may result from this rezoning would create a transitional density between Harbor House and the single-family neighborhood is not contrary to the public interest.

**6. Compliance with the Comprehensive Plan**

The Comprehensive Plan does not make specific recommendations for this area other than the future land use map designating this area residential (not density recommendations). One of the thrusts of the Comprehensive Plan is the preservation and enhancement of neighborhoods. Clearly the elimination of a nonconforming use that presents itself as a nuisance in this neighborhood would support every goal of the comprehensive plan relative to neighborhood preservation. The data in the applicant's statement for the City Council about population and housing stock appear correct and indicate that the neighborhood of subject property is stable and contains a mix of older, new, and newly renovated single-family homes as well as a recent townhouse development and the older, but successful, waterfront condominium developments. The most destabilizing influence in the area is the bus yard.

Providing the regulatory framework to redevelop this nonconforming use residentially supports the goals of the comprehensive plan.

**7. Whether there was a change or mistake that would warrant a rezoning of the property.**

In order for a governing body to approve an individual rezoning request (usually called a 'piecemeal' request), it must find that there was a mistake in the original zoning placed on the property, or that there has been a change in the character of the neighborhood of the rezoning request sufficient to warrant a rezoning. The finding of change or mistake is not exclusive, and a governing body may find that both occurred (or did not occur) in granting or denying a rezoning request. The applicant argues that both change and mistake occurred.

Evidence of Change

The applicant argues that the intensity of development around subject property, e.g. Harbor House, and the President's Point and Shearwater condominium complexes have affected the neighborhood even though they were known quantities in 1970, and that since they contain no townhouses, the neighborhood has either single-family homes or apartment/condominiums and not the full mix of housing that townhouses would afford. In actuality the change resulting from these developments is the unanticipated impact on surrounding properties that their development and occupation has caused. It is one thing to anticipate multi-family development, it is another thing to experience the effects of such development twenty or thirty years out. On the whole the development and redevelopment in the area has had a stabilizing effect, and the influx of population has put pressure on nonconforming uses (such as the bus yard) to cease. The more residents in an area the more people that are impacted by such nonconforming uses.

The operations of the bus company have also changed. Hours of operation, types of vehicles, and the number of trips differ from thirty years ago. In 1970 the City recognized that a bus yard was not appropriate and therefore zoned it R2, rendering it legally nonconforming. The rationale behind creating nonconforming uses is to a) not 'take' the property by denying a property the use of the property after rezoning; and b) hope that by restricting the use it will fade away over time. In the case of the Lonergan Property it did not fade away, and restrictions on the expansion/improvement of nonconforming property has limited, and provided a disincentive, to the owner making an investment to improve the property and/or operations of the business. The neighborhood has changed while the bus yard has remained the same, thereby creating a number of conflicts.

One other evidence of a change in the neighborhood can be seen in the fact that when rezoning was sought for this property in the late 1980's, there was no neighborhood support. Now there is abundant (though not absolute) support—something has changed.

This in and of itself would not warrant a rezoning but there appears to be ample evidence that the neighborhood has adapted to the various multi-family projects in it and by adapting their has been a change in its character over that last thirty years.

Mistake

Given the increase in residential property values in the area of the property and the degree of in-fill that has occurred, the fact that the Lonergan property remains the only large parcel of residentially zoned land in this part of Eastport that has *not* developed/redeveloped is prima facie evidence that the zoning classification applied in 1970 was inappropriate. This is a parcel that literally abuts R4 zoning developed to a high density and is in an area of R2, R3 and R4 zoning as evidenced by the applicant's exhibits. In order to alleviate a nonconforming, nuisance use (as the bus yard is) it is necessary to allow the land to develop in a manner that the value of the new development is greater than the maintenance of the nonconforming use, provided that the new development is promoted does not negatively impact the neighborhood. Obviously, zoning the Lonergan property R3 in 1970 would not have impacted the neighborhood, and would have been consistent with and provided a transition from the R4 property it abuts to the R2 zoning beyond. R3 would not have been inappropriate and may have resulted in the property redeveloping earlier as the value of the R3 zone would have been greater than the value of maintaining the nonconforming use.

Seconded. CARRIED on voice vote.

The main motion as amended CARRIED on voice vote.

Alderman Hammond moved to adopt O-31-04 amended on third reading.  
Seconded. CARRIED on voice vote.

**O-36-04 For the purpose of the purpose of amending the configuration of the Annapolis harbor line on Back Creek outboard of Port Annapolis Marina, 7074 Bembe Beach Road; and all matters relating to said harbor line; and matters generally relating to said harbor line.**

Alderman Hammond moved to adopt O-36-04 on second reading. Seconded.

The Environmental Matters Committee reported favorably with an amendment to O-36-04.

Alderman Tolliver moved the Environmental Matters Committee amendment to O-36-04 by substituting the map that squares off the existing lines rather than projecting them into a triangle beyond the boundaries of structures pre-existing the time when harbor lines were drawn. Seconded. CARRIED on voice vote.

The main motion as amended CARRIED on voice vote.

Alderman Tolliver moved to adopt O-36-04 with amended map on third reading.  
Seconded. CARRIED on voice vote.

**O-5-05 For the purpose of amending the boundary of that portion of the B2 Zoning District located along Fourth Street in Eastport; and matters generally relating to said zoning map amendment.**

Alderman Hammond moved to adopt O-5-05 on first reading. Seconded.  
CARRIED on voice vote.

Referred to Rules and City Government Committee and Planning Commission

**O-6-05 For the purpose of designating Deputy Fire Chiefs as exempt service; allowing for the hiring of up to two Deputy Fire Chiefs; correcting pay scale for Fire and Police Chiefs; and matters generally relating to said Exempt Service.**

Alderman Hammond moved to adopt O-6-05 on first reading. Seconded.  
CARRIED on voice vote.

Referred to Rules and City Government Committee

**O-7-05 For the purpose of defining taxicab company; defining a distinctive color scheme or insignia for taxicab companies; requiring that taxicab drivers, and any ride-along guests, wear clearly identifiable standard attire; restricting the number of independent owner/operator permits to 25 per license year; directing taxicab drivers to refrain from receiving or sending phone calls or messages without the use of hand-free technology; and matters generally relating to said taxicab regulations.**

Alderman Hammond moved to adopt O-7-05 on first reading. Seconded.  
CARRIED on voice vote.

Referred to Economic Matters Committee

**O-8-05 For the purpose of specifying compensation and allowances to be paid to the Mayor and Aldermen for the terms of office commencing on the first Monday in December, 2005; and matters generally relating to said compensation.**

Alderman Hammond moved to adopt O-8-05 on first reading. Seconded.  
CARRIED on voice vote.

Referred to the Finance Committee

**O-9-05 For the purpose of authorizing a lease of certain municipal property located in the general harbor, Dock Street and Edgewood Road areas to United States Yacht Shows, Inc. and Annapolis Boat Shows, Inc., bodies corporate, for a certain period of time in October 2009, subject to certain terms, provisions and conditions, for the purpose of conducting boat shows; and all matters relating to said lease.**

Alderman Hammond moved to adopt O-9-05 on first reading. Seconded.  
CARRIED on voice vote.

Referred to the Economic Matters Committee

**O-10-05 For the purpose of clarifying the methodology in determining the density requirements for subdivisions and residential planned developments that incorporate land specified as RCA, Resource Conservation Area.**

Alderman Hammond moved to adopt O-10-05 on first reading. Seconded.  
CARRIED on voice vote.

Referred to Rules and General Government Committee and Planning Commission

**O-11-05 For the purpose of establishing height limitations for structures in specified areas of the MX district; providing for limitations regarding alcoholic beverage licenses in specified areas of the MX district; establishing requirements regarding the demolition of buildings and structures within the MX district; grandfathering standards for setbacks for certain buildings within the MX district; and matters generally relating to the MX District.**

Alderman Hammond moved to adopt O-11-05 on first reading. Seconded.  
CARRIED on voice vote.

Referred to Rules and General Government Committee and Planning Commission

**O-12-05 For the purpose of authorizing the lease of the MarketHouse to Dean & DeLuca Annapolis, Inc., a body corporate, for a certain period of time, subject to certain terms, provisions, and conditions, for the purpose of operating a full scale gourmet market and café; and all matters relating to said lease.**

Alderman Hammond moved to adopt O-12-05 on first reading. Seconded.  
CARRIED on voice vote.

Referred to Economic Matters Committee and the Finance Committee

### RESOLUTIONS

**R-17-04 For the purpose of increasing taxicab fares for taxicabs licensed by the City; and all matters relating to said taxicab rate increases.**

The Finance and Public Safety Committees reported favorably with an amendment on R-17-04.

Alderman Carter moved to adopt R-17-04 on second reading. Seconded.

Alderman Fox moved the Finance Committee amendment to R-17-04 as follows:

**Amendment #1** *[Corrects table to show that the late night surcharge is to be continued as is at \$1.00 if picked-up between midnight and 5 a.m.]*

On page 1 strike lines 25 through 41 and substitute the following:

**NOW, THEREFORE, BE IT RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that the taxicab rates for the City of Annapolis shall be as stipulated in the new rate's **New Rates** column of the table of this resolution in the following table:

Annapolis Taxi Rates – Present and New		
Present Rates	Proposed New Rates	Change in Percent
Drop charge \$1.80 for the first 1/7th mile	Drop charge \$2.00	11%
\$1.40 per mile in increments of 20¢ per 1/7th mile	\$1.60 per mile in increments of 20¢ per 1/8th mile	14%
\$20.00 per hour in increments of 20¢ per 36 seconds	\$24.00 per hour in increments of 35¢ per minute	10%
\$1.00 late night surcharge Midnight to 5:00 A.M.	\$1.00 late night surcharge Midnight to 5:00 A.M.	n/a

Seconded. CARRIED on voice vote.

The main motion amended CARRIED on voice vote.

**R-28-04 For the purpose of creating a second Deputy Fire Chief slot; and all**

**matters relating to said slot.**

Without objection, R-28-04 was withdrawn.

- R-1-05      For the purpose of revising the Fines Schedule to reduce the fine for serving alcohol to underaged persons; and all matters relating to said penalty.**

Alderman Fox moved to adopt R-1-05 on second reading. Seconded. CARRIED on voice vote.

- R-3-05      For the purpose of expressing the support of the Annapolis City Council to maintain, reconstruct or build a larger public County library at 1410 West Street; and all matters relating to said West Street Library.**

Alderman Tolliver moved to adopt R-3-05 on first reading. Seconded. CARRIED on voice vote.

- R-4-05      For the purpose of urging the State of Maryland to allow the Bridge Run and Walk to go forward as planned on May 1, 2005; and matters generally relating to said policy.**

Alderman Cohen moved to adopt R-4-05 on first reading. Seconded. CARRIED on voice vote.

- R-5-05      For the purpose of establishing a monthly rate for parking at the Knighton Garage; and matters generally relating to said Knighton parking rates.**

Alderman Hammond moved to adopt R-5-05 on first reading. Seconded. CARRIED on voice vote.

Alderman Fox moved to suspend the rules to allow passage of the resolution at the meeting of its introduction. Seconded. CARRIED on voice vote.

Alderman Hammond moved to adopt R-5-05 on second reading. Seconded. CARRIED on voice vote.

- R-6-05      For the purpose of authorizing the Mayor to execute an agreement with Comcast of Maryland, Inc. for the granting and renewal of non-exclusive, revocable franchises for cable services in the City of Annapolis; and matters generally relating to said agreement.**

Following discussion, R-6-05 was postponed to the next meeting of the City Council on February 28, 2005.

- R-7-05      For the purpose of waiving the fees for City services to be provided in connection with the USNA 2005 Be A Hero Run to be held on March 5, 2005; and all matters relating to said waiver of fees.**

Alderman Hammond moved to adopt R-7-05 on first reading. Seconded. CARRIED on voice vote.



BUSINESS AND MISCELLANEOUS

1. Payment of Monthly Bills

Alderman Hammond moved to pay the monthly bills. Seconded. CARRIED on voice vote.

2. Appointments

Alderman Cohen moved to approve the Mayor's appointment of the following individual:

1/14/05 Board of Appeals . . . . . James (Jamie) Gregory

Seconded. CARRIED on voice vote.

3. Comcast update

City Attorney Spencer read the Comcast Programming Changes pursuant to the "Agreement Concerning Consent to Cable Franchise Transfer" dated 4/15/97.

4. Report of the Commission on Compensation of Elected Officials (O-8-05)

Chair Israel gave a brief presentation and answered questions from Council.

Upon motion duly made, seconded and adopted, the meeting was adjourned at 10:04 p.m.

Deborah Heinbuch, MMC  
City Clerk